

REMARKS

In the November 14, 2006 Office Action, claims 18 and 19 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite; claims 1-7, 9, 18-22, 24, 27, 29 and 31 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,596,380 to Williams; claims 1, 2, 6, 7, 18-21, 23, 24, 26 and 29-31 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,954,166 to Rubino; claims 1-5, 7, 24 and 26 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,945,696 to Johanningmeier; claims 8, 10, 11, 32 and 33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Williams in view of German Patent No. DE 10013829 to Pfister; and claims 12-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Williams or Rubino in view of U.S. Patent No. 1,139,119 to Heidenreich.

By the present amendment, claims 1, 8, 10, 11, 18, 19, 29 and 33 are amended, and claims 3 and 32 are canceled. That leaves claims 1, 2, 4-24, 26, 27, 29-31, and 33 pending in this application with claims 1 and 29 being independent. The rejections over prior art are respectfully traversed. In summary, none of the cited prior art either alone or in combination, teaches, discloses, suggests or renders obvious a spinning top that includes a stem received in a recess of the body and that includes at least one transverse arm portion, as recited in independent claims 1 and 29 as amended. Each rejection is addressed in detail below.

Claim Rejections - 35 U.S.C. § 112

Claims 18 and 19 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for lack of antecedent basis for the phrase "the pivot pins." In response, claims 18 and 19 are amended to eliminate that phrase. Accordingly, Applicant requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, second paragraph.

Claim Rejections – 35 U.S.C. 102

Claims 1-7, 9, 18-22, 24, 27, 29 and 31 are rejected under 35 U.S.C. § 102(b) as being anticipated by Williams. However, Williams fails to disclose all of the limitations of either independent claim 1 or 29.

Williams discloses a toy 10 that includes a central disc 11 and ring 12 which rotate with respect to an outer ring 13 to form a top, as seen in Figure 7. Although the disc 11 and ring 12 extend through the central opening of the outer ring 13, neither disc 11 nor ring 12 is received in a recess of the ring 13, as recited in the claimed invention. The opening of the ring 13 of Williams cannot be both the opening of the body and the recess in the body of the claimed invention. Additionally, neither the disc 11 nor ring 12 of Williams includes a transverse arm portion, as recited in the claimed invention.

Anticipation requires that every limitation of a claim must identically appear in a prior art reference. See *Gechter v. Davidson*, 43 U.S.P.Q. 2d 1030, 1032 (Fed. Cir. 1997). It is clear that the limitation of a the stem being received in a recess of the body and including a transverse arm portion does not identically appear in Williams. Absence from the prior art reference of any claimed element negates anticipation. See *Rowe v. Dror*, 42 U.S.P.Q.2d 1550, 1553 (Fed. Cir. 1997).

Accordingly, Applicant requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) in view of Williams. Dependent claims 2, 4-7, 9, 18-22, 24, 27, 29, and 31 are believed to allowable over Williams for the same reasons discussed above. Moreover, these claims recite additional features not found in Williams. For example, dependent claims 4 and 5 recite that the stem is at least partially received or entirely received within the body in the first position. Williams instead provides no recess at all.

Claims 1, 2, 6, 7, 18-21, 23, 24, 26 and 29-31 are rejected under 35 U.S.C. § 102(b) as being anticipated by Rubino. Like Williams, Rubino fails to disclose all of the claim limitations of independent claims 1 and 29, as amended.

Rubino teaches a flywheel 11 and associated spindle 10 which extends through a central opening in flywheel 11 to form a top, as seen in Figure 5. However, the spindle 10 is not received in a recess in the flywheel 11. Instead, the spindle 10 of Rubino is received in a recess 31 of the container 13, as seen in Figure 1. The container 13 of Rubino could not be considered the body of the claimed invention because the container 13 does not include an opening through which the spindle extends, as required by the claimed invention. Additionally, the spindle 10 of Rubino does not include a transverse arm portion. Instead, threads 19 of the spindle 10 engage the spindle 10 with the flywheel 11.

Accordingly, a stem that lies in a recess of the body and that includes at least one transverse arm portion is not identically found in Rubino. As such, Applicant requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) in view of Rubino. Dependent claims 2, 6, 7, 18-21, 23, 24, 26 and 29-31 are also believed allowable over Rubino for the same reasons discussed above. Moreover, these claims recite additional features not found in Rubino. For example, dependent claim 30 recites that the first latch is a tab extending from the stem and the second latch is a tab extending from the body. Rubino fails to disclose tabs, and instead teaches a threaded engagement between the stem and body.

Claims 1-5, 7, 24 and 26 are rejected under 35 U.S.C. § 102(b) as being anticipated by Johanningmeier. Johanningmeier also fails to teach all of the claim limitations of independent claim 1, as amended.

Johanningmeier discloses a matchbook spinner including a match 27 that extends through openings 23 and 25 of covers 15 and 17 of the spinner. However, the match 27 does not include a transverse arm portion, as recited in amended independent claim 1.

Therefore, because a stem with a transverse arm portion is not identically found in Johanningmeier, Applicant requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) in view of Johanningmeier. Moreover, dependent claims 2, 4, 5, 7, 24 and 26 are believed to be allowable over Johanningmeier for the same reasons discussed above.

Claims Rejections 35 U.S.C. § 103

Claims 8, 10-11 and 32-33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Williams in view of Pfister. As discussed above, Williams fails to disclose, teach or suggest all of the claim limitations of independent claims 1 and 29. Accordingly, a prima facie case of obviousness has not been established with respect to their dependent claims 8, 10, 11 and 33 (claim 32 has been canceled).

Moreover, it would not have been obvious to one skilled in the art to modify Williams in view of Pfister. In particular, if Williams was modified to include the pivot pins 119 of Pfister, as suggested, then the disc 11 and ring 12 could not be disassembled or assembled with the outer ring, as required by Williams. As seen in Figure 5 and column 2, line 74 – column 3, line 10, disc 11 and ring 12 are easily assembled and disassembled from outer ring 13 by rotating the disc 11 and ring 12 90° with respect to outer ring 13, allowing the elements to be separated. By adding pivot pins 115 of Pfister, disc 11 and ring 12 could not be assembled and disassembled from ring 13, as required by Williams.

Accordingly, a prima facie case of obviousness has not been established because neither Williams nor Williams combined with Pfister discloses all of the claim limitations of independent claims 1 and 29 or their dependent claims. Therefore, Applicant requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a) over Williams in view of Pfister.

Claims 12-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Williams or Rubino in view of Heidenreich. As discussed, neither Williams nor Rubino discloses all of the limitations of independent claim 1, as amended. Therefore, dependent claims 12-17 are also allowable for the same reasons discussed above.

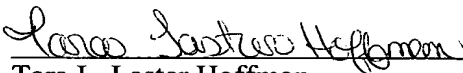
Moreover, Heidenreich fails to disclose the deficiencies of Williams or Rubino. Heidenreich merely discloses a disc 6 with a body 7 that receives a spindle. However, the spindle of Heidenreich is neither received in a recess of the body 7 nor includes a transverse arm portion, as recited in the claimed invention.

Therefore, because none of the cited prior art either alone or in combination teaches or renders obvious all of the claim limitations of independent claim 1 or dependent claims 12-17, Applicant requests reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a).

In view of the foregoing, Applicant believes claims 1, 2, 4-24, 26, 27, 29-31, and 33 are in allowable condition. Prompt and favorable treatment is respectfully solicited.

Please charge any shortage or credit any overpayment of fees to BLANK ROME LLP, Deposit Account No. 23-2185 (001058-00025). Any fees due are authorized above.

Respectfully submitted,


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